IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7157 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANIFABEN WIFE OF ISMAILBHAI MAMAD MIYANA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Rajkot, passed an order on August, 27, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Hanifaben, wife of Ismailbhai Mamad Miyana,

under the provisions of the said Act.

2. The grounds of detention indicate that the detaining authority took into consideration thirteen offences registered against the detenu. The authority also considered statements of three anonymous witnesses and recorded a satisfaction that the fear expressed by the witnesses is genuine qua the petitioner and, therefore, powers under Section 9(2) of the PASA Act were required to be exercised by not disclosing the identity of the witnesses to the detenu. The detaining authority came to a conclusion that the petitioner is a bootlegger and is required to be immediately prevented from pursuing her activities, for which, detention under PASA is the only efficacious remedy as compared to other less drastic remedies under ordinary law.

3. The petitioner/detenu challenges the order of detention on various counts. Ms. Banna Datta, learned advocate for Mr. Dave, learned advocate for the petitioner, submitted that the order of detention is vitiated due to improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the statements have not been verified by the detaining authority, yet the authority has in unequivocal terms stated that it has personally satisfied about the need for exercise of powers under Section 9(2) of the PASA Act. She submitted that this reflects non-application of mind and improper exercise of powers by the detaining authority, resulting into infringement of right of the detenu of making an effective representation. The petitioner may, therefore, be allowed and the order of detention may be quashed and set aside.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority has relied upon the verification made by Dy.S.P. and, therefore, it cannot be said that the subjective satisfaction recorded by the detaining authority is improper.

5. Having regard to the rival side contentions, at the outset, it may be noted that, on perusal of the papers, it is clear that the detaining authority has himself not verified the statements and, as such, there is no question of the detaining being personally satisfied about the genuineness of the fear expressed by the witnesses qua the petitioner. The language employed in the grounds of detention indicate that verification by Dy.S.P. was not at the behest of or upon the direction of the District Magistrate and, therefore, the District

Magistrate/the detaining authority has only considered the verification of the statements by the Dy.S.P., which was placed before him. As such, the detaining authority had no material for arriving at an independent subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The detaining authority has not filed any affidavit in reply and, therefore also, this Court is at loss to appreciate how a subjective satisfaction is recorded by the detaining authority in absence of personal verification and in absence of verification through some responsible officer at the behest of the detaining authority. There appears not any independent report from Dy.S.P. about genuineness of the fear expressed and the verification, if read, indicates only verification of the fear expressed by the witnesses in the main statements recorded by Police Inspector, LCB, Rajkot. Under these circumstances, the subjective satisfaction indicated by the detaining authority for exercising powers under Section 9(2) of the PASA Act is vitiated. This will have an adverse bearing on the right of the detenu of making an effective representation as envisaged under Article 22(5) of the Constitution. The detenu's right of making an effective representation having been infringed thereby, the detention would stand vitiated. This makes the petition allowable.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 27th August, 1999, passed against the detenu is hereby quashed. The detenu-Hanifaben, wife of Ismailbhai Mamad Miyana, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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